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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3282

[Docket No. FR-5238-F-02]

RIN 2502-AI84

**Manufactured Housing: Revision of Notification, Correction, and
Procedural Regulations**

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD regulations that establish procedures for manufacturers and others to address reports of problems with manufactured homes. These "Subpart I" regulations establish a system of protections with respect to imminent safety hazards and violations of the federal construction and safety standards, assuring a minimum of formality and delay, while protecting the rights of all parties. This final rule establishes the procedures that manufacturers, retailers, distributors, State Administrative Agencies (SAAs), and primary inspection agencies (PIAs), are required to follow to assure that notification and correction are provided with respect to manufactured homes, when required.

DATES: Effective [Insert date 180 days after date of publication in the **FEDERAL REGISTER**].

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20410; telephone number 202-708-6409 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll free number).

SUPPLEMENTARY INFORMATION: This final rule follows publication of a February 15, 2011, proposed rule and takes into consideration the public comments received on the proposed rule. After careful consideration of the issues raised by the commenters and further consideration of the issues by HUD, this final rule makes some changes to the February 15, 2011, proposed rule.

I. Background

The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401-5426) (the Act) authorizes HUD to establish the Federal Manufactured Home Construction and Safety Standards (Construction and Safety Standards), codified in 24 CFR part 3280. Section 615 of the Act provides that manufacturers of manufactured homes furnish notification of any defect in any manufactured home produced by such manufacturer that fails to conform to the Construction and Safety Standards or which constitutes an imminent safety hazard to the purchaser of such manufactured home. HUD's procedural and enforcement provisions published at 24 CFR part 3282, subpart I (Subpart I), implement these requirements and have, since their promulgation in 1976, been a major component of HUD's manufactured housing regulations. These provisions establish the system for manufacturers and retailers to assure that factory-built homes sold to consumers after having been manufactured pursuant to a federal building code provide at least the protections that are built into the construction and safety standards in that building code. Because the federal building code preempts a multiplicity of state and local building codes that would otherwise apply to the construction of such homes,

manufacturers, distributors, retailers, and regulators are charged with particular responsibilities designed to protect both the purchasers of these homes and the general public. The regulations in Subpart I seek to balance the interests of all persons who have a stake in the future of quality, affordable manufactured housing.

As the manufactured housing industry has evolved from manufacturing largely single-section homes to today's multiple-section homes that can be creatively and aesthetically configured and finished, while maintaining the important affordable character of the homes, various parties have identified a need to refine the regulations in Subpart I. The Manufactured Housing Consensus Committee (MHCC), established by the Manufactured Housing Improvement Act of 2000 (Pub. L. 106-569, approved December 27, 2000), has made refinement of these regulations a priority, and HUD has worked with the MHCC to redraft Subpart I in a way that would address issues identified by regulated entities, state and federal regulators, and consumers. The MHCC has twice recommended specific revisions of Subpart I to the Secretary. In both cases, HUD concluded that the MHCC recommendations were not consistent with the statutory requirements and the Secretary's authority.¹

The June 14, 2006, notice includes the complete text of a set of MHCC recommendations that were developed through extensive discussions in public meetings of the MHCC, in task force and subcommittees, and which was very close to being acceptable under the Act. As required by section 604(b)(3) of the Act (42 U.S.C. 5403(b)(3)), HUD first submitted its proposed rule to the MHCC for the committee's prepublication review and comments. On

¹ See HUD Notices: Manufactured Housing Consensus Committee-Rejection of Consumer Complaint Handling Proposal; Correction, 68 FR 47881 (August 12, 2003), amending a denial of a proposed recommendation by the Manufactured Housing Consensus Committee to revise regulations concerning how manufacturers are required to handle reports of problems with manufactured homes, 68 FR 35850 (July 25, 2003); and Notice of Rejection of Manufactured Housing Consensus Committee recommendation of proposed regulation. Manufactured Housing Consensus Committee-Rejection of Subpart I Proposal, A Proposed Rule by the Housing and Urban Development Department, June 14, 2006. (71 FR 34464).

February 15, 2011 (76 FR 8852), HUD published its proposed rule on this set of MHCC recommendations, with a few modifications. HUD's February 15, 2011, proposed rule describes HUD's modifications of the MHCC's recommendations and provides a detailed explanation for each modification. HUD's proposed rule also includes a section, as required by section 604(b)(3) of the Act, that discusses in detail HUD's rejection of significant comments provided by the MHCC during its formal review of the HUD proposed regulation, including a written explanation of the reasons for the rejection and the MHCC's comments, and HUD's request for public comment on the MHCC's comments. Members of the public are encouraged to review HUD's February 15, 2011, proposed rule for HUD's responses to the MHCC's prepublication comments.

II. Changes and Clarifications Made in This Final Rule

This final rule follows publication of the February 15, 2011, proposed rule and takes into consideration the public comments received on the proposed rule. In response to public comment, a discussion of which is presented in the following section of this preamble, and in further consideration of issues addressed at the proposed rule stage, HUD is making the following changes, at this final rule stage, to the February 15, 2011, proposed rule:

1. Definition of "Defect" (§ 3282.7). The final rule maintains the currently codified definition of defect without change.
2. Production Inspection Primary Inspection Agencies (IPIAs) (§ 3282.362). In response to public comment, HUD has revised this paragraph to provide that IPIAs must review the manufacturer's service and inspection records. HUD is also relocating this paragraph to § 3282.366(b).

3. Purpose and Scope (§ 3282.401(a)). HUD has revised § 3282.401(a) to provide that the purpose of Subpart I is to address safety hazards and failures to conform to the construction and safety standards rather than to address violations of the standards.

4. General provisions (§ 3282.402(b)). HUD has removed the words “unforeseeable” and “unreasonable” from § 3282.402(b) to clarify that manufacturers are not responsible for failures due to any consumer abuse or neglect of maintenance.

5. Manufacturers’ determinations; Methods for determining class (§ 3282.404(c)(iii)). HUD has revised § 3282.404(c)(iii) to provide that inspection of service records is an appropriate method to determine whether a defect exists in a class of manufactured homes if the defect or hazard would be “visible to and reportable by consumers or retailers.”

6. Manufacturers’ determinations; Methods of Notification (§ 3282.405(d)). HUD has revised § 3282.405(d) to provide that manufacturers may notify distributors, purchasers, or registered owners of manufactured homes to a defect or imminent safety hazard by any means that provides a receipt.

7. Required manufacturer correction (§ 3282.406). HUD is clarifying § 3282.406 to provide that a manufacturer, retailer, or installer may not be held responsible for problems created by a consumer or purchaser if it is determined through dispute resolution, or by other means, that the consumer or purchaser is responsible for the problem. HUD is also adding a cross-reference to § 3286.115 to clarify the date of installation from which the manufacturer, retailer, or installer of a manufactured home may be responsible for defects in the home that render it not fit for the use for which it was intended.

8. Replacement or repurchase of homes after sale to purchaser (§ 3282.414). In response to a public comment, HUD is clarifying that the Secretary or an SAA may require corrective

action if the manufacturer is unable to correct or remove the hazard or defect within 60 days of an order issued under § 3282.413(c).

9. Correction of homes before sale to purchaser (§ 3282.415). To clarify the point at which the sale of a home to a purchaser is complete, HUD is adding a cross-reference to § 3282.252 to this section.

10. Recordkeeping requirements. In response to a public comment, HUD is removing proposed §§ 3282.417(f) and 3282.417(g), the requirement for retailers and distributors to maintain records of corrections taken to bring a home into compliance with the construction and safety standards and the proposed time period for the record retention, respectively. HUD notes, however, that retailers remain responsible for retaining the records required under HUD's Dispute Resolution Program.

III. Public Comments

The following section presents a summary of the significant issues raised by the public comments in response to the February 15, 2011, proposed rule, and HUD's responses to the issues. Four public comments were submitted on the proposed regulation. Commenters included a national trade association representing the manufactured housing industry, a number of agencies providing legal services for low-income individuals, a state that serves as an in-plant primary inspection agency (IPIA) and State Administrative Agency (SAA), and an independent third-party design approval and in-plant primary inspection agency (DAPIA, IPIA). The comments were generally supportive. One commenter, for example, stated that it was pleased that HUD adopted the MHCC recommendation to extend, from 20 to 30 days, the time required to make an initial determination regarding the possibility of a noncompliance, defect, serious defect, or imminent safety hazard. (See proposed § 3282.404(a)).

A group of commenters supported HUD's efforts to strengthen its Subpart I regulations, describing them as an effort to create a "lemon law" for repurchase or replacement of defective manufactured homes when a manufacturer cannot correct an imminent safety hazard or a serious defect. The group stated that the remedies provided by Subpart I would not rise to the level of protections available to Ohio consumers under Ohio's new car lemon laws, and that manufactured home purchasers would benefit greatly from the protections for manufactured housing provided by the rule. The commenters stated that even though repurchase or replacement may seldom be necessary, the availability of the remedies provided by the rule will increase accountability and give individual consumers more options when it becomes apparent that they have not received the full benefit of their bargain and have trouble getting cooperation from any of the various industry players in the supply chain.

Another commenter supported HUD's proposal to add retailers to the list of persons responsible for correction of defects in homes. According to the commenter, the integrated sales contractual system of manufacturers and specified dealers often results in employees of the retailers making the corrections for the manufacturer. The commenters stated that, by making both the manufacturer and seller equally responsible for the correction, this proposal would eliminate blame shifting, reduce the delay in correcting the problem, and better ensure that defects are corrected.

Other commenters submitted detailed comments about specific provisions in the regulations, which are reviewed and addressed sequentially, by section, below.

Comment: Definition of "Defect" (§ 3282.7). A commenter stated their concern that the definition of defect may expand the obligations of manufacturers to provide notice and correction to consumers for defects other than those directly related to construction of the

manufactured home as required in 24 CFR part 3280. The commenter also stated that it does not make sense to use a word in its own definition.

HUD Response: HUD agrees that the definition of defect proposed in HUD's February 15, 2011, proposed rule does not add clarity to the term. As a result, HUD has decided to maintain the currently codified definition of "defect" without change. This definition, which has in essence been codified since 1976, provides that the term encompasses failures to comply with federal safety and construction standards that render the home or any part thereof not fit for the ordinary use for which it was intended but which do not result in an unreasonable risk of injury or death to occupants of the manufactured home.

Comment: Production Inspection Primary Inspection Agencies (§ 3282.362(c)).

Two commenters stated that the proposed regulation requires PIAs to periodically review the records required under § 3282.417(e) to determine whether evidence exists that the manufacturer is ignoring or not performing under its approved quality assurance manual. The commenters stated that they continued to support the more specific recommendations of the MHCC that required that only the service records be reviewed by the PIA. They contended that the proposed regulation is overly broad, and that it seemed inappropriate to require the PIA to examine records unrelated to Subpart I problems. The commenters stated that the PIA's responsibilities under the Procedural and Enforcement regulations are clearly spelled out in § 3282.351 and include two basic functions: approval of the plant facility and performance of inspections of the manufacturing process. The commenters stated that the comprehensive recordkeeping and review requirements required by this proposal far exceed the appropriate PIA functions under § 3282.351 and will do nothing to ensure that consumers are protected. The commenters stated the new requirement as written is vague and ambiguous, and that the change

would significantly add to the PIA's responsibilities, increase costs, and diminish the primary PIA responsibility of inspecting homes and ensuring that manufacturers are conducting quality assurance.

HUD Response: HUD agrees with the commenters and has revised the final rule to limit the IPIAs review of manufacturer records to service and inspection records. HUD has relocated the language to § 3282.366, which is a more appropriate location for this requirement.

Comment: Purpose and Scope (§ 3282.401(a)). A commenter recommended that the purpose of Subpart I is not to address violations of the construction and safety standards and recommends that the paragraph be revised accordingly.

HUD Response: HUD agrees with the commenter and has revised this paragraph to provide that the purpose of Subpart I is to address safety hazards and failures to conform to the construction and safety standards rather than to address violations of the standards

Comment: General provisions (§ 3282.402(b)). Two commenters, an association and a public agency, recommended that the words "unforeseeable" and "unreasonable" be removed from § 3282.402(b), as these words are subjective and, in a court of law, consumer abuse and neglect of maintenance are sufficient on their own to limit responsibility.

HUD Response: HUD agrees with the commenters and has deleted those terms from the final rule to clarify that manufacturers are not responsible for failure due to any consumer abuse or neglect of maintenance.

Comment: Manufacturers determination and related concurrences. Expansion of the scope of consumer protection requirements (§ 3282.404). A commenter stated that the manufacturer's responsibilities outlined in § 3282.404 improperly expand the scope of the consumer protection requirements envisioned by Subpart I. The commenter stated, for

example, that a small drywall crack or loose piece of trim could require extensive investigations of designs, homes, service records, audit findings, quality control records, etc., to make a reasonable determination as to whether a problem requiring action under Subpart I exists. The commenter contended that the extensive investigations required by § 3282.404 to make an initial determination would require extremely time consuming and labor intensive data collection for problems that are not related to any underlying structural or design flaw that would trigger a Subpart I action. Although the commenter supported the narrower requirement in the proposed rule, which requires manufacturers to investigate the existence of “likely defects” rather than “possible defects,” they recommended that HUD clarify what it means by “reasonable” investigation in § 3282.404(a)(3).

HUD Response: This final rule clarifies that when a manufacturer makes a determination of a noncompliance for a minor problem found in one home, it only needs to make a record of its determination as required by § 3282.417. In addition, the term “reasonable” has been deleted in the final rule and the manufacturer’s investigation requirements have been clarified by indicating that the manufacturer is to include a review of its inspection and service records, IPIA inspection records, and, as appropriate, to conduct inspections of homes in the class.

Comment: Manufacturer responsibility when no further action under Subpart I is required (§ 3282.404(a)). A commenter stated that the rule should clarify how problems should be addressed when manufacturers make a determination that no further action is required, but a problem still exists. Under the current regulations, the manufacturer notifies the responsible party, but the proposed regulation is silent on how the problem should be addressed. The commenter also stated that when the manufacturer makes an initial determination that no further

action under Subpart I is required, but a problem still exists, the manufacturer must forward information in its possession to the appropriate retailer and, if known, the installer for consideration.

HUD Response: HUD has clarified § 3282.404(a), which describes the responsibility of the manufacturer to inform the retailer and installer, respectively, when the manufacturer determines that no further action is required, but the problem continues to exist, and has added a reference to § 3282.417. The final rule also adds that the manufacturer, retailer, or installer may choose to resolve responsibility for corrections under dispute resolution under 24 CFR part 3288.

Comment: Duplicative Reporting Requirements (§ 3282.404(a)(2)). A commenter stated that this section requires the manufacturer to immediately report a serious defect or imminent safety hazard to the Secretary, the manufacturers' PIA, and to the SAA in the state of manufacture. The commenter stated that the reporting requirement duplicates the same requirements in § 3282.408, which requires the notification as a part of the manufacturer's notification and correction plan. The commenter recommended that during this first critical 30-day period, the focus should be on finding and determining the scope of the problem, and preparing a plan to fix the problem, not on additional paperwork. The commenter recommended adopting the MHCC recommendation to require this notification only once, per § 3282.408.

HUD Response: The Department does not agree with the commenter as immediate follow-up and notice is needed to rectify these problems in all manufactured homes where these serious and potentially life-threatening situations exist.

Comment: "Readily" Reportable (§ 3282.404(c)). A commenter supported the inclusion of service records, in addition to actual home inspections, as one method to investigate the existence of a problem with a class of homes. However, the commenter expressed that the

subjective wording as to what would or would not be “readily reportable,” and whether or not the Secretary or a SAA would agree, was an issue. An SAA means an agency of a state that has been approved or conditionally approved to carry out the state plan for enforcement of the standards pursuant to section 623 of the Act, 42 U.S.C. 5422, and subpart G of this part. The commenter stated that it believed that HUD’s intent is to not limit service records as the only source of determining whether a problem exists, but believed that speculation and guess work should not be a component of Subpart I.

HUD Response: HUD agrees with the commenter and has revised this section to provide that inspection of service records is an appropriate method to determine whether a defect exists in a class of manufactured homes if the defect or hazard would be “visible to and reportable by consumers or retailers.”

Comment: Revise terminology for certified mail. SAA responsibilities (§ 3282.405 (d)). A commenter recommended that HUD replace “certified mail or other more expeditious means” and “certified or express mail” with “by certified mail or other expeditious means that provide a receipt.” The commenter contended that this would allow FedEx, UPS, DHL, and email communication, with return receipt from recipient required, and would help support paperless environments.

HUD Response: HUD agrees with the recommendation offered by the commenter and has revised § 3282.405(d) to provide that manufacturers may notify distributors, purchasers, or registered owners of manufactured homes to a defect or imminent safety hazard by any means that provides a receipt.

Comment: Required manufacturer correction (§ 3282.406). A commenter stated that § 3282.406(a)(2) provides warranty protection for one year, beginning on the date of installation

of the home. According to the commenter, the intent of this provision is to provide consumers with warranty protection for issues reported during the first year after the sale of the home to the homebuyer. However, the commenter contends that, as written, the warranty period could go beyond a year. The commenter expressed concern that there would be situations where the homebuyer purchases a home and leaves it on-site without proper blocking or protection.

Between the time of sale and the installation of the home, the home could suffer serious degradation. The commenter suggested that the proposed regulation be amended to take into consideration this scenario. The commenter recommended that manufacturers, installers, and retailers should not be responsible for actions taken by the purchaser, and which are outside their control.

HUD Response: HUD agrees with the commenter and is clarifying § 3286.406 to provide that a manufacturer, retailer, or installer may not be held responsible for problems created by a consumer or purchaser if dispute resolution or other means determines that the consumer or purchaser is responsible for the problem. HUD is also adding a cross-reference to § 3286.115 to clarify the date of installation from which the manufacturer, retailer or installer of a manufactured home may be responsible for defects in the home that render it not fit for the use for which it was intended.

Comment: Clarify date of installation (§ 3282.406(a)(2)). A commenter suggested that the “date of installation” be clarified, effectively suggesting that the “date of installation of the home” refers to the period following the consumers purchase of the home. The commenter stated that homes are often installed in manufactured home communities and listed for sale. The commenter stated that the consumer would thus not have adequate

protection against possible defects if they purchased the house after it had been installed and the one-year period had expired.

HUD Response: HUD agrees with the commenter and is adding a cross-reference to § 3286.115 to clarify the date of installation in the final rule.

Comment: Specify that SAAs would notify the Secretary about classes of manufactured homes rather than individual homes (§ 3282.412(b)). A commenter recommended that § 3282.412(b) be amended to specify that the SAA must notify the Secretary when a serious defect or an imminent safety hazard possibly exists in more than one home or in a class of homes. The commenter questioned whether the intent of this section was to extend the scope of the language to require that the SAA notify the Secretary if individual homes have a defect or imminent safety hazard.

HUD Response: The final rule was not revised as recommended by the commenter since notification by an SAA is needed by HUD to facilitate correction of any other homes produced by the same or different manufacturers in other states that contain the same or similar types of serious defect or life-threatening problems.

Comment: Implementation of final determinations (§ 3282.414). A commenter recommended that the word “fully” be deleted from § 3282.414(a). The commenter states that the word is ambiguous, open to wide interpretation, and could result in costly legal fees by consumers, manufacturers, and the Federal Government to determine what the word “fully” actually means.

HUD Response: HUD agrees with the commenter and is deleting the word “fully” and substituting “completely correct or remove” in the final rule.

Comment: Correction of homes before sale to purchaser (§ 3282.415). A commenter suggested that § 3282.415(a) be revised to more clearly define when the sale of a home to a purchaser is complete. The commenter recommended that the existing language in §3282.252, “Completion of a retail sale will be at the time the dealer completes set-up of the manufactured home,” be added to the end of § 3282.415(a) of the proposed regulation.

HUD Response: As suggested, by the commenter, HUD is clarifying the point at which the sale of a home to a purchaser is complete by adding a cross-reference to § 3282.252.

Comment: Oversight of notification and correction activities (§ 3282.416). Two commenters stated that § 3282.416(a)(4) requires periodic review of the manufacturer’s service record by its IPIA. The commenters stated that this requirement goes beyond the appropriate responsibilities and functions of the IPIA and will diminish the overriding responsibility of the IPIA to ensure that homes are being inspected and that manufacturers are conducting quality assurance.

HUD Response: HUD does not agree with commenters but has clarified the frequency of review in the final rule to require at least a monthly review of the service records by the IPIA.

Comment: Recordkeeping requirements for Determinations, Notification, and Corrections (§ 3282.417). Two commenters stated that this provision gives sufficient flexibility to the manufacturer to determine how to keep such records so as not to repeat the same information in the file associated with every manufactured home that is part of a class determination, but that § 3282.417(e) improperly adds requirements under Subpart I for keeping records for determinations, notifications, and corrections. The commenters state that the section sets forth detailed and prescriptive recordkeeping requirements for every manufactured home regardless of

whether the home is part of a Subpart I action. The commenters stated that the proposal will require time consuming and costly overhaul of current recordkeeping systems and provides little or no flexibility to maintain records based on company size, production volume, quality assurance manuals, or other individual administrative practices. One commenter recommended that § 3282.417(e) be deleted from the proposed regulation. Another commenter suggested that the scope be clarified to assure that the section deals only with records related to determinations.

HUD Response: HUD does not agree with the commenters. Section 3282.417 does not expand the scope or type of information required to be maintained by the manufacturer. Additionally, this final rule continues to permit manufacturers to maintain either consolidated or separate class files. Section 3282.417(e) simply adds a requirement that the manufacturer organize its files in serial-number order to simplify retrieval.

Comment: Require recordkeeping by home rather than by class (§ 3282.417). One commenter, a regulator, stated that the proposed regulation allows the manufacturer flexibility in recordkeeping, but its experience is that it can achieve a quicker turnaround in working with manufacturers when all the information is consolidated. The commenter also stated that consolidated information facilitated a comprehensive review of the service records, documented handling of consumer complaints, and missing/incomplete Record of Purchaser cards which manufacturers are required to provide to purchasers under § 3282.211 of the regulation. The commenter recommended, therefore, the consolidation of all the records in each home file. Another commenter stated that the section places a new added burden on retailers (§ 3282.417(f)). The commenter suggested that the section be eliminated given that the current draft proposed regulation does not require a retailer to review the records. The commenter also stated that there was no time period for the record retention.

HUD Response: HUD agrees with the commenters and is removing the requirement for retailers and distributors to maintain records of corrections taken to bring a home into compliance with the construction and safety standards and the proposed time period for the record retention. HUD notes, however, that retailers remain responsible for retaining the records required under HUD's Dispute Resolution Program.

Comment: Revise the factors for appropriateness and amount of civil penalties (§ 3282.418 (e)). A commenter stated that the "ability to pay a civil penalty" should not be a determining factor if all the other factors determine a civil penalty is appropriate. The commenter suggests that if a manufacturer could not or would not pay the civil penalty, HUD would have to find another remedy, such as a criminal penalty. The commenter recommended and agreed that the civil penalty would best be determined by HUD under its enforcement authority in § 3282.10 to ensure consistency among states and manufacturers.

HUD Response: HUD does not agree with the commenter as all of the criteria need to be considered and are retained in the final rule for determining the amount, application, and appropriateness of civil penalties.

IV. Conforming Changes

HUD is also making nonsubstantive, technical edits to 24 CFR part 3282. First, HUD is removing the term "dealer" and substituting the term "retailer" throughout part 3282. This change is intended to conform part 3282 to section 603(a)(1) of the Manufactured Housing Improvement Act of 2000 (Pub. L. 106-569) (42 U.S.C. 5402), which amended the National Manufactured Housing Construction and Safety Standards Act of 1974 by deleting the term "dealer" and substituting the term "retailer." Second, HUD is removing references to "Director, Manufactured Housing Standards Division," and substituting "Administrator, Office of

Manufactured Housing Programs, Office of Housing.” HUD is making this change to reflect updated titles and office designations. Finally, HUD is making edits to ensure that affected sections contain accurate cross-references to the provisions implemented by this Subpart I final rule. These edits are technical in nature and make no substantive changes to requirements.

V. Findings and Certifications

Regulatory Review – Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the Order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and it was not reviewed by OMB. This rule revises 24 CFR part 3282, Subpart I, which provides the procedures by which HUD enforces the notification and correction of defects requirements of the Manufactured Home Construction and Safety Standards Act of 1974. This rule is not significant because it reorganizes and streamlines the existing regulation and proposes to clarify rather than change or add substance to the existing regulation.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This final rule does not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact remains applicable to this final rule and is available for public inspection between 8 a.m. and 5 p.m., weekdays, in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service, 800-877-8339 (this is a toll free number).

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose

substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

HUD is amending its current regulations in 24 CFR part 3282, subpart I, in order to make the regulations clearer and more consistent with the Act. This rule is, in large part, based on the recommendations of the MHCC and does not greatly change current requirements affecting or preempting state law. Participation by an SAA in HUD's Manufactured Housing Program is optional, and preemption of state law is provided only to the extent required by the Act.

Paperwork Reduction Act

The information collection requirements contained in this proposed regulation have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Number 2502-0541. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. HUD is required by law to implement statutory requirements concerning how manufacturers and others address reports of problems with manufactured homes, in order to protect both purchasers of factory-built homes and the general public. Small entities would not be burdened by this rule because the rule would not establish requirements that differ significantly from current requirements. This rule streamlines the current regulatory process to reduce burdens on small entities. The annual

number of manufactured home placements since 1999 has decreased considerably and was estimated at 58,100 in 2009. This rule does not, however, affect or alter the cost of manufacture of such homes. For instance, this rule amends current regulations to allow manufacturers to indemnify themselves through agreements or contracts with retailers, transporters, installers, distributors, or others for certain costs associated with corrective work performed. As a result, HUD does not believe that the rule would have a significant economic effect on a substantial number of small entities. Further, the rule is intended to have a beneficial impact, by reducing the recordkeeping burdens on manufacturers. For example, manufacturers would be allowed to keep records in a central file, thereby reducing recordkeeping requirements for small entities. Also under the rule, manufacturers would no longer be required to provide notification of a possible defect if only one home is involved and the manufacturer corrects the home, thus further reducing paperwork burdens on small entities. These revisions impose no significant economic impact on a substantial number of small entities. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the Manufactured Housing Program is 14.171.

List of Subjects in 24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends part 3282 of title 24 of the Code of Federal Regulations, as follows:

PART 3282 – MANUFACTURED HOUSING PROCEDURAL AND ENFORCEMENT REGULATIONS

1. The authority citation for part 3282 continues to read as follows:

Authority: 28 U.S.C. 2461 note; 42 U.S.C. 5424; and 42 U.S.C. 3535(d).

§§ 3282.8, 3282.14, 3282.205, 3282.207, 3282.208, 3282.211, 3282.251, 3282.252, 3282.253, 3282.254, 3282.255, 3282.256, 3282.302, 3282.303, 3282.307, 3282.362, 3282.363, and 3282.552 [Amended]

2. In 24 CFR part 3282, remove the words “dealer” and “dealers” and add in their place the words “retailer” or “retailers,” respectively, in the following places:

- a. § 3282.8(e) and (j);
- b. § 3282.14(b)(8) and (e);
- c. § 3282.205(c);
- d. § 3282.207(d);
- e. § 3282.208(a);
- f. § 3282.211(a)(1) and (a)(2)(i);
- g. Subpart F subpart heading;
- h. § 3282.251(a), (b), and (c);
- i. § 3282.252(a) introductory text, (a)(2), and (b);
- j. § 3282.253(b) and (c);
- k. § 3282.254 section heading, (a), (b), and (c);
- l. § 3282.255(a) and (b);
- m. § 3282.256 section heading, (a), and (b);
- n. § 3282.302(b)(13);

- o. § 3282.303(a) and (b);
- p. § 3282.307(b)(1);
- q. § 3282.362(d)(1) and (d)(4);
- r. § 3282.363;
- s. § 3282.552.

2. Amend § 3282.7 as follows:

- a. Revise paragraphs (c) and (v);
- b. Remove and reserve paragraphs (i) and (l); and
- c. Add paragraph (dd).

The revisions and addition read as follows:

§ 3282.7 Definitions.

* * * * *

(c) *Alteration* means the replacement, addition, and modification, or removal of any equipment or installation after sale by a manufacturer to a retailer or distributor but prior to sale by a retailer to a purchaser which may affect the construction, fire safety, occupancy, plumbing, heat-producing or electrical system. It includes any modification made in the manufactured home that may affect the compliance of the home with the standards, but it does not include the repair or replacement of a component or appliance requiring plug-in to an electrical receptacle where the replaced item is of the same configuration and rating as the one being replaced. It also does not include the addition of an appliance requiring *plug-in* to an electrical receptacle, which appliance was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected.

* * * * *

(v) *Manufactured home construction* means all activities relating to the assembly and manufacture of a manufactured home including, but not limited to, those relating to durability, quality, and safety, but does not include those activities regulated under the installation standards in this chapter.

* * * * *

(dd) *Retailer* means any person engaged in the sale, leasing, or distribution of new manufactured homes primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale.

* * * * *

3. Revise § 3282.52 to read as follows:

§ 3282.52 Address of communications.

Unless otherwise specified, communications shall be addressed to the Administrator, Office of Manufactured Housing Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410.

4. In § 3282.204, revise paragraph (e) to read as follows:

§ 3282.204 IPIA services.

* * * * *

(e) If during the course of production, an IPIA finds a failure to conform to a standard exists in a manufactured home under production, the manufacturer must correct the failure to conform in any manufactured home still in the factory and held by distributors or retailers and shall carry out remedial actions under § 3282.416(a) with respect to any other manufactured homes which may contain the same failure to conform.

5. In § 3282.253, revise paragraph (a) to read as follows:

§ 3282.253 Removal of prohibition of sale.

(a) If a distributor or retailer has a manufactured home in its possession or a manufactured home with respect to a sales transaction has not yet been completed, and a distributor or retailer knows as a result of notification by the manufacturer or otherwise that the manufactured home contains a failure to conform or imminent safety hazard, the distributor or retailer may seek the remedies available under § 3282.415.

* * * * *

6. In § 3282.302, revise the introductory text and paragraphs (b)(4), (b)(5)(i), and (b)(5)(ii) to read as follows:

§ 3282.302 State plan.

A State wishing to qualify and act as an SAA under this subpart shall make a State Plan Application under this section. The State Plan Application shall be made to the Administrator, Office of Manufactured Housing Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, and shall include:

* * * * *

(b) * * *

(4) Provide for the notification and correction procedures under subpart I of this part where the SAA is to act under that subpart by providing the required approval by the SAA of the plan for notification and correction described in §§ 3282.408, 3282.409, and 3282.410, including approval of the number of units that may be affected and the proposed repairs, and by providing for approval of corrective actions where appropriate under subpart I,

(5) * * *

(i) Remedial actions carried out by manufacturers for which the SAA approved the plan for notification and correction or for which the SAA has waived formal notification under subpart I.

(ii) A manufacturer's handling of consumer complaints and other information under subpart I as to plants located in the State.

* * * * *

7. In § 3282.309, revise paragraph (a) to read as follows:

§ 3282.309 Formal and informal presentations of views held by SAAs.

(a) When an SAA is the appropriate agency to hold a Formal or Informal Presentation of Views under § 3282.412 of subpart I, the SAA shall follow the procedures set out in §§ 3282.152 and 3282.153, with the SAA acting as the Secretary otherwise would under that section. Where § 3282.152 requires publication of notice in the FEDERAL REGISTER, the SAA shall, to the maximum extent possible, provide equivalent notice throughout the State by publication in the newspaper or newspapers having statewide coverage or otherwise. The determination of whether to provide an Informal Presentation of Views under § 3282.152(f), or a Formal Presentation of Views under § 3282.152(g), is left to the SAA.

* * * * *

8. In § 3282.353, revise the introductory text to read as follows:

§ 3282.353 Submission format.

States and private organizations that wish to act as primary inspection agencies shall submit to the Administrator, Office of Manufactured Housing Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, an application that includes the following:

* * * * *

9. Revise § 3282.366 to read as follows:

§ 3282.366 Notification and correction campaign responsibilities.

(a) Both IPIAs and DAPIAs are responsible for assisting the Secretary or an SAA in identifying the class of manufactured homes that may have been affected where the Secretary or an SAA makes or is contemplating making a preliminary determination of imminent safety hazard, serious defect, defect, or noncompliance under § 3282.412 with respect to manufactured homes for which the IPIA and DAPIA provided either plant inspection or design approval services.

(b) The IPIA must in each manufacturing plant review at least monthly the manufacturer's service and inspection records to verify if appropriate determinations are being made by the manufacturer under § 3282.404 and, if not, take the actions required by this section and § 3282.404.

(c) The IPIA in each manufacturing plant is also responsible for reviewing manufacturer determinations of the class of manufactured homes affected when the manufacturer is acting under subpart I. The IPIA must concur in the method used to determine the class of potentially affected manufactured homes or is to state why it finds the method to be inappropriate, inadequate, or incorrect.

10. Revise Subpart I to read as follows:

Subpart I –Consumer Complaint Handling and Remedial Actions

Sec.

3282.401 Purpose and scope.

3282.402 General provisions.

3282.403 Consumer complaint and information referral.

3282.404 Manufacturers' determinations and related concurrences.

- 3282.405 Notification pursuant to manufacturer's determination.
- 3282.406 Required manufacturer correction.
- 3282.407 Voluntary compliance with the notification and correction requirements under the Act.
- 3282.408 Plan of notification required.
- 3282.409 Contents of plan.
- 3282.410 Implementation of plan.
- 3282.411 SAA initiation of remedial action.
- 3282.412 Preliminary and final administrative determinations.
- 3282.413 Implementation of Final Determination.
- 3282.414 Replacement or repurchase of homes after sale to purchaser.
- 3282.415 Correction of homes before sale to purchaser.
- 3282.416 Oversight of notification and correction activities.
- 3282.417 Recordkeeping requirements.
- 3282.418 Factors for appropriateness and amount of civil penalties.

§ 3282.401 Purpose and scope.

(a) Purpose. The purpose of this subpart is to establish a system of protections provided by the Act with respect to imminent safety hazards and failures to conform to the construction and safety standards with a minimum of formality and delay, while protecting the rights of all parties.

(b) Scope. This subpart sets out the procedures to be followed by manufacturers, retailers, and distributors, SAAs, primary inspection agencies, and the Secretary to assure that notification and correction are provided with respect to manufactured homes when required under this subpart. Notification and correction may be required with respect to manufactured homes that have been sold or otherwise released by the manufacturer to another party.

§ 3282.402 General provisions.

(a) Purchaser's rights. Nothing in this subpart shall limit the rights of the purchaser under any contract or applicable law.

(b) Manufacturer's liability limited. A manufacturer is not responsible for failures that occur in any manufactured home or component as the result of normal wear and aging, consumer abuse, or neglect of maintenance. The life of a component warranty may be one of the indicators used to establish normal wear and aging. A failure of any component may not be attributed by the manufacturer to normal wear and aging under this subpart during the term of any applicable warranty provided by the original manufacturer of the affected component.

§ 3282.403 Consumer complaint and information referral.

(a) Retailer responsibilities. When a retailer receives a consumer complaint or other information about a home in its possession, or that it has sold or leased, that likely indicates a noncompliance, defect, serious defect, or imminent safety hazard, the retailer must forward the complaint or information to the manufacturer of the manufactured home in question as early as possible, in accordance with § 3282.256.

(b) SAA and HUD responsibilities. (1) When an SAA or the Secretary receives a consumer complaint or other information that likely indicates a noncompliance, defect, serious defect, or imminent safety hazard in a manufactured home, the SAA or HUD must:

(i) Forward the complaint or information to the manufacturer of the home in question as early as possible; and

(ii) Send a copy of the complaint or other information to the SAA of the State where the manufactured home was manufactured or to the Secretary if there is no such SAA.

(2) When it appears from the complaint or other information that an imminent safety hazard or serious defect may be involved, the SAA of the State where the home was manufactured must also send a copy of the complaint or other information to the Secretary.

(c) Manufacturer responsibilities. Whenever the manufacturer receives information from any source that the manufacturer believes in good faith relates to a noncompliance, defect, serious defect, or imminent safety hazard in any of its manufactured homes, the manufacturer must, for each such occurrence, make the determinations required by § 3282.404.

§ 3282.404 Manufacturers' determinations and related concurrences.

(a) Initial determination. (1) Not later than 30 days after a manufacturer receives information that it believes in good faith may indicate a noncompliance, defect, serious defect, or imminent safety hazard, the manufacturer must make a specific initial determination that there is a noncompliance, defect, serious defect, or imminent safety hazard, or that the information requires no further action under this subpart. If a manufacturer makes a final determination of noncompliance for an individual home (see § 3282.412(b)) and a class of homes is not involved, no further action is needed by the manufacturer other than to keep a record of its determination as required by § 3282.417. If the manufacturer determines that it is not the cause of the problem, but a problem still exists, the manufacturer must forward the information in its possession to the appropriate retailer (see § 3282.254), and, if known, to the installer (see §§ 3286.115 and 3286.811) for their consideration. Alternatively, the manufacturer, retailer, or installer may choose to submit the issue for resolution under dispute resolution (see 24 CFR part 3288).

(2) When a manufacturer makes an initial determination that there is a serious defect or an imminent safety hazard, the manufacturer must immediately notify the Secretary, the SAA in the state of manufacture, and the manufacturer's IPIA.

(3) In making the determination of noncompliance, defect, serious defect, or imminent safety hazard, or that no further action is required under this subpart, the manufacturer must review the information it received and carry out investigations, including, a review of service

records, IPIA inspection records, and, as appropriate, inspections of homes in the class. The manufacturer must review the information, the known facts, and the circumstances relating to the complaint or information, including service records, approved designs, and audit findings, as applicable, to decide what investigations are reasonable.

(b) Class determination. (1) When the manufacturer makes an initial determination of defect, serious defect, or imminent safety hazard, the manufacturer must also make a good-faith determination of the class that includes each manufactured home in which the same defect, serious defect, or imminent safety hazard exists or likely exists. Multiple occurrences of defects may be considered the same defect if they have the same cause, are related to a specific workstation description, or are related to the same failure to follow the manufacturer's approved quality assurance manual. Good faith may be used as a defense to the imposition of a penalty, but does not relieve the manufacturer of its responsibilities for notification or correction under this subpart I. The manufacturer must make this class determination not later than 20 days after making a determination of defect, serious defect, or imminent safety hazard.

(2) Paragraph (c) of this section sets out methods for a manufacturer to use in determining the class of manufactured homes. If the manufacturer can identify the precise manufactured homes affected by the defect, serious defect, or imminent safety hazard, the class of manufactured homes may include only those manufactured homes actually affected by the same defect, serious defect, or imminent safety hazard. The manufacturer is also permitted to exclude from the class those manufactured homes for which the manufacturer has information that indicates the homes were not affected by the same cause. If it is not possible to identify the precise manufactured homes affected, the class must include every manufactured home in the

group of homes that is identifiable, since the same defect, serious defect, or imminent safety hazard exists or likely exists in some homes in that group of manufactured homes.

(3) For purposes related to this section, a defect, a serious defect, or an imminent safety hazard likely exists in a manufactured home if the cause of the defect, serious defect, or imminent safety hazard is such that the same defect, serious defect, or imminent safety hazard would likely have been introduced systematically into more than one manufactured home. Indications that the defect, serious defect, or imminent safety hazard would likely have been introduced systematically may include, but are not limited to, complaints that can be traced to the same faulty design or faulty construction, problems known to exist in supplies of components or parts, information related to the performance of a particular employee or use of a particular process, and information signaling a failure to follow quality control procedures with respect to a particular aspect of the manufactured home.

(4) If the manufacturer must determine the class of homes pursuant to paragraph (b) of this section, the manufacturer must obtain from the IPIA, and the IPIA must provide, either:

(i) The IPIA's written concurrence on the methods used by the manufacturer to identify the homes that should be included in the class of homes; or

(ii) The IPIA's written statement explaining why it believes the manufacturer's methods for determining the class of homes were inappropriate or inadequate.

(c) Methods for determining class. (1) In making a class determination under paragraph (b) of this section, a manufacturer is responsible for carrying out reasonable investigations. In carrying out investigations, the manufacturer must review the information, the known facts, and the relevant circumstances, and generally must establish the cause of the defect, serious defect, or imminent safety hazard. Based on the results of such investigations and all

information received or developed, the manufacturer must use an appropriate method or appropriate methods to determine the class of manufactured homes in which the same defect, serious defect, or imminent safety hazard exists or likely exists.

(2) Methods that may be used in determining the class of manufactured homes include, but are not limited to:

(i) Inspection of the manufactured home in question, including its design, to determine whether the defect, serious defect, or imminent safety hazard resulted from the design itself;

(ii) Physical inspection of manufactured homes of the same design or construction, as appropriate, that were produced before and after a home in question;

(iii) Inspection of the service records of a home in question and of homes of the same design or construction, as appropriate, produced before and after that home, if it is clear that the cause of the defect, serious defect, or imminent safety hazard is such that the defect, serious defect, or imminent safety hazard would be visible to and reportable by consumers or retailers;

(iv) Inspection of manufacturer quality control records to determine whether quality control procedures were followed and, if not, the time frame during which they were not;

(v) Inspection of IPIA records to determine whether the defect, serious defect, or imminent safety hazard was either detected or specifically found not to exist in some manufactured homes;

(vi) Identification of the cause as relating to a particular employee whose work, or to a process whose use, would have been common to the production of the manufacturer's homes for a period of time; and

(vii) Inspection of records relating to components supplied by other parties and known to contain or suspected of containing a defect, a serious defect, or an imminent safety hazard.

(3) When the Secretary or an SAA decides the method chosen by the manufacturer to conduct an investigation in order to make a class determination is not the most appropriate method, the Secretary or SAA must explain in writing to the manufacturer why the chosen method is not the most appropriate.

(d) Documentation required. The manufacturer must comply with the recordkeeping requirements in § 3282.417 as applicable to its determinations and any IPIA concurrence or statement that it does not concur.

§ 3282.405 Notification pursuant to manufacturer's determination.

(a) General requirement. Every manufacturer of manufactured homes must provide notification, as set out in this section, with respect to any manufactured home produced by the manufacturer in which the manufacturer determines, in good faith, that there exists or likely exists in more than one home, the same defect introduced systematically, a serious defect, or an imminent safety hazard.

(b) Requirements by category. (1) Noncompliance. A manufacturer must provide notification of a noncompliance only when ordered to do so by the Secretary or an SAA, pursuant to §§ 3282.412 and 3282.413.

(2) Defects. When a manufacturer has made a class determination in accordance with § 3282.404 that a defect exists or likely exists in more than one home, the manufacturer must prepare a plan for notification in accordance with § 3282.408, and must provide notification with respect to each manufactured home in the class of manufactured homes.

(3) Serious defects and imminent safety hazards. When a manufacturer has made an initial determination in accordance with § 3282.404(a) that a serious defect or imminent safety hazard exists or likely exists, the manufacturer must prepare a plan for notification in accordance

with § 3282.408, must provide notification with respect to all manufactured homes in which the serious defect or imminent safety hazard exists or likely exists, and must correct the home or homes in accordance with § 3282.406.

(c) Plan for notification required. (1) If a manufacturer determines that it is responsible for providing notification under this section, the manufacturer must prepare and receive approval on a plan for notification as set out in § 3282.408, unless the manufacturer meets alternative requirements established in § 3282.407.

(2) If the Secretary or SAA orders a manufacturer to provide notification in accordance with the procedures in §§ 3282.412 and 3282.413, the Secretary or SAA has the option of requiring a manufacturer to prepare and receive approval on a plan for notification.

(d) Method of notification. When a manufacturer provides notification as required under this section, notification must be:

(1) By certified mail or other more expeditious means that provides a receipt to each retailer or distributor to whom any manufactured home in the class of homes containing the defect, serious defect, or imminent safety hazard was delivered;

(2) By certified mail or other more expeditious means that provides a receipt to the first purchaser of each manufactured home in the class of manufactured homes containing the defect, serious defect, or imminent safety hazard, and, to the extent feasible, to any subsequent owner to whom any warranty provided by the manufacturer or required by federal, state, or local law on such manufactured home has been transferred, except that notification need not be sent to any person known by the manufacturer not to own the manufactured home in question if the manufacturer has a record of a subsequent owner of the manufactured home; and

(3) By certified mail or other more expeditious means that provides a receipt to each other person who is a registered owner of a manufactured home in the class of homes containing the defect, serious defect, or imminent safety hazard and whose name has been ascertained pursuant to § 3282.211 or is known to the manufacturer.

§ 3282.406 Required manufacturer correction.

(a) Correction of noncompliances and defects. (1) Section 3282.415 sets out requirements with respect to a manufacturer's correction of any noncompliance or defect that exists in each manufactured home that has been sold or otherwise released to a retailer but that has not yet been sold to a purchaser.

(2) In accordance with section 623 of the Act and Part 3288, "Manufactured Home Dispute Resolution Program," of this chapter, the manufacturer, retailer, or installer of a manufactured home deemed responsible for correction of repairs or defects must correct, at its expense, each failure in the performance, construction, components, or material of the home that renders the home or any part of the home not fit for the ordinary use for which it was intended and that is reported during the one-year period beginning on the date of installation of the home (see § 3286.115).

(b) Correction of serious defects and imminent safety hazards. (1) A manufacturer required to furnish notification under § 3282.405 or § 3282.413 must correct, at its expense, any serious defect or imminent safety hazard that can be related to an error in design or assembly of the manufactured home by the manufacturer, including an error in design or assembly of any component or system incorporated into the manufactured home by the manufacturer.

(2) If, while making corrections under any of the provisions of this subpart, the manufacturer creates an imminent safety hazard or serious defect, the manufacturer shall correct the imminent safety hazard or serious defect.

(3) Each serious defect or imminent safety hazard corrected under this paragraph (b) must be brought into compliance with applicable construction and safety standards or, where those standards are not specific, with the manufacturer's approved design.

(c) Inclusion in plan. (1) In the plan required by § 3282.408, the manufacturer must provide for correction of those homes that are required to be corrected pursuant to paragraph (b) of this section.

(2) If the Secretary or SAA orders a manufacturer to provide correction in accordance with the procedures in § 3282.413, the Secretary or SAA has the option of requiring a manufacturer to prepare and receive approval on a plan for correction.

(d) Corrections by owners. A manufacturer that is required to make corrections under paragraph (b) of this section, or that elects to make corrections in accordance with § 3282.407, must reimburse any owner of an affected manufactured home who chooses to make the correction before the manufacturer did so, for the reasonable cost of correction.

(e) Correction of appliances, components, or systems. (1) If any appliance, component, or system in a manufactured home is covered by a product warranty, the manufacturer, retailer, or installer that is responsible under this section for correcting a noncompliance, defect, serious defect, or imminent safety hazard in the appliance, component, or system may seek the required correction directly from the producer. The SAA that approves any plan of notification required pursuant to § 3282.408 or the Secretary, as applicable, may establish reasonable time limits for

the manufacturer of the home and the producer of the appliance, component, or system to agree on who is to make the correction and for completing the correction.

(2) Nothing in this section shall prevent the manufacturer, retailer, or installer from seeking indemnification from the producer of the appliance, component, or system for correction work done on any appliance, component, or system.

§ 3282.407 Voluntary compliance with the notification and correction requirements under the Act.

A manufacturer that takes corrective action that complies with one of the following three alternatives to the requirement in § 3282.408 for preparing a plan will be deemed to have provided any notification required by § 3282.405:

(a) Voluntary action—one home. When a manufacturer has made a determination that only one manufactured home is involved, the manufacturer is not required to provide notification pursuant to § 3282.405 or to prepare or submit a plan if:

(1) The manufacturer has made a determination of defect; or

(2) The manufacturer has made a determination of serious defect or imminent safety hazard and corrects the home within the 20-day period. The manufacturer must maintain, in the plant where the manufactured home was manufactured, a complete record of the correction. The record must describe briefly the facts of the case and any known cause of the serious defect or imminent safety hazard, state what corrective actions were taken, and be maintained in the service records in a form that will allow the Secretary or an SAA to review all such corrections.

(b) Voluntary action—multiple homes. Regardless of whether a plan has been submitted under § 3282.408, the manufacturer may act prior to obtaining approval of the plan. Such action is subject to review and disapproval by the SAA of the state where the home was manufactured

or by the Secretary, unless the manufacturer obtains the written agreement of the SAA or the Secretary that the corrective action is adequate. If such an agreement is obtained, the correction must be accepted as adequate by all SAAs and the Secretary, if the manufacturer makes the correction as agreed to and any imminent safety hazard or serious defect is eliminated.

(c) Waiver. (1) A manufacturer may obtain a waiver of the notification requirements in § 3282.405 and the plan requirements in § 3282.408 either from the SAA of the state of manufacture, when all of the manufactured homes that would be covered by the plan were manufactured in that state, or from the Secretary. As of the date of a request for a waiver, the notification and plan requirements are deferred pending timely submission of any additional documentation as the SAA or the Secretary may require and final resolution of the waiver request. If a waiver request is not granted, the plan required by § 3282.408 must be submitted within 5 days after the expiration of the time frame established in § 3282.408, if the manufacturer is notified that the request was not granted.

(2) The waiver may be approved if, not later than 20 days after making the determination that notification is required, the manufacturer presents evidence that it, in good faith, believes would show to the satisfaction of the SAA or the Secretary that:

(i) The manufacturer has identified all homes that would be covered by the plan in accordance with § 3282.408;

(ii) The manufacturer will correct, at its expense, all of the identified homes, either within 60 days of being informed that the request for waiver has been granted or within another time limit approved in the waiver;

(iii) The proposed repairs are adequate to remove the defect, serious defect, or imminent safety hazard that gave rise to the determination that correction is required; and

(3) The manufacturer must correct all affected manufactured homes within 60 days of being informed that the request for waiver has been granted or within the time limit approved in the waiver, as applicable. The manufacturer must record the known cause of the problem and the correction in the service records, in an approved form that will allow the Secretary or SAA to review the cause and correction.

§ 3282.408 Plan of notification required.

(a) Manufacturer's plan required. Except as provided in § 3282.407, if a manufacturer determines that it is responsible for providing notification under § 3282.405, the manufacturer must prepare a plan in accordance with this section and § 3282.409. The manufacturer must, as soon as practical, but not later than 20 days after making the determination of defect, serious defect, or imminent safety hazard, submit the plan for approval to one of the following, as appropriate:

(1) The SAA of the State of manufacture, when all of the manufactured homes covered by the plan were manufactured in that State; or

(2) The Secretary, when the manufactured homes were manufactured in more than one State or there is no SAA in the State of manufacture.

(b) Implementation of plan. Upon approval of the plan, including any changes for cause required by the Secretary or SAA after consultation with the manufacturer, the manufacturer must carry out the approved plan within the agreed time limits.

§ 3282.409 Contents of plan.

(a) Purpose of plan. This section sets out the requirements that must be met by a manufacturer in preparing any plan it is required to submit under § 3282.408. The underlying

requirement is that the plan show how the manufacturer will fulfill its responsibilities with respect to notification and correction.

(b) Contents of plan. The plan must:

(1) Identify, by serial number and other appropriate identifying criteria, all manufactured homes for which notification is to be provided, as determined pursuant to § 3282.404;

(2) Include a copy of the notice that the manufacturer proposes to use to provide the notification required by § 3282.405;

(3) Provide for correction of those manufactured homes that are required to be corrected pursuant to § 3282.406(b);

(4) Include the IPIA's written concurrence or statement on the methods used by the manufacturer to identify the homes that should be included in the class of homes, as required pursuant to § 3282.404(b); and

(5) Include a deadline for completion of all notifications and corrections.

(c) Contents of notice. Except as otherwise agreed by the Secretary or the SAA reviewing the plan under § 3282.408, the notice to be approved as part of the plan must include the following:

(1) An opening statement that reads: "This notice is sent to you in accordance with the requirements of the National Manufactured Housing Construction and Safety Standards Act."

(2) The following statement: "[choose one, as appropriate: Manufacturer's name, or the Secretary, or the (insert State) SAA] has determined that [insert identifying criteria of manufactured home] may not comply with an applicable Federal Manufactured Home Construction or Safety Standard."

(3) Except when the manufacturer is providing notice pursuant to an approved plan or agreement with the Secretary or an SAA under § 3282.408, each applicable statement must read as follows:

(i) "An imminent safety hazard may exist in (identifying criteria of manufactured home)."

(ii) "A serious defect may exist in (identifying criteria of manufactured home)."

(iii) "A defect may exist in (identifying criteria of manufactured home)."

(4) A clear description of the defect, serious defect, or imminent safety hazard and an explanation of the risk to the occupants, which must include:

(i) The location of the defect, serious defect, or imminent safety hazard in the manufactured home;

(ii) A description of any hazards, malfunctions, deterioration, or other consequences that may reasonably be expected to result from the defect, serious defect, or imminent safety hazard;

(iii) A statement of the conditions that may cause such consequences to arise; and

(iv) Precautions, if any, that the owner can, should, or must take to reduce the chance that the consequences will arise before the manufactured home is repaired;

(5) A statement of whether there will be any warning that a dangerous occurrence may take place and what that warning would be, and of any signs that the owner might see, hear, smell, or feel that might indicate danger or deterioration of the manufactured home as a result of the defect, serious defect, or imminent safety hazard;

(6) A statement that the manufacturer will correct the manufactured home, if the manufacturer will correct the manufactured home under this subpart or otherwise;

(7) A statement in accordance with whichever of the following is appropriate:

(i) Where the manufacturer will correct the manufactured home at no cost to the owner, the statement must indicate how and when the correction will be done, how long the correction will take, and any other information that may be helpful to the owner; or

(ii) When the manufacturer does not bear the cost of repair, the notification must include a detailed description of all parts and materials needed to make the correction; a description of all steps to be followed in making the correction, including appropriate illustrations; and an estimate of the cost of the purchaser or owner of the correction;

(8) A statement informing the owner that the owner may submit a complaint to the SAA or Secretary if the owner believes that:

(i) The notification or the remedy described therein is inadequate;

(ii) The manufacturer has failed or is unable to remedy the problem in accordance with its notification; or

(iii) The manufacturer has failed or is unable to remedy the problem within a reasonable time after the owner's first attempt to obtain remedy; and

(9) A statement that any actions taken by the manufacturer under the Act in no way limit the rights of the owner or any other person under any contract or other applicable law and that the owner may have further rights under contract or other applicable law.

§ 3282.410 Implementation of plan.

(a) Deadline for notifications. (1) The manufacturer must complete the notifications carried out under a plan approved by an SAA or the Secretary under § 3282.408 on or before the deadline approved by the SAA or Secretary. In approving each deadline, an SAA or the Secretary will allow a reasonable time to complete all notifications, taking into account the number of manufactured homes involved and the difficulty of completing the notifications.

(2) The manufacturer must, at the time of dispatch, furnish to the SAA or the Secretary a true or representative copy of each notice, bulletin, and other written communication sent to retailers, distributors, or owners of manufactured homes regarding any serious defect or imminent safety hazard that may exist in any homes produced by the manufacturer, or regarding any noncompliance or defect for which the SAA or Secretary requires, under § 3282.413(c), the manufacturer to submit a plan for providing notification.

(b) Deadline for corrections. A manufacturer that is required to correct a serious defect or imminent safety hazard pursuant to § 3282.406(b) must complete implementation of the plan required by § 3282.408 on or before the deadline approved by the SAA or the Secretary. The deadline must be no later than 60 days after approval of the plan. In approving the deadline, the SAA or the Secretary will allow a reasonable amount of time to complete the plan, taking into account the seriousness of the problem, the number of manufactured homes involved, the immediacy of any risk, and the difficulty of completing the action. The seriousness and immediacy of any risk posed by the serious defect or imminent safety hazard will be given greater weight than other considerations.

(c) Extensions. An SAA that approved a plan or the Secretary may grant an extension of the deadlines included in a plan, if the manufacturer requests such an extension in writing and shows good cause for the extension, if the SAA or the Secretary decides that the extension is justified and not contrary to the public interest. When the Secretary grants an extension for completion of any corrections, the Secretary will notify the manufacturer and must publish notice of such extension in the Federal Register. When an SAA grants an extension for completion of any corrections, the SAA must notify the Secretary and the manufacturer.

(d) Recordkeeping. The manufacturer must provide the report and maintain the records that are required by § 3282.417 for all notification and correction actions.

§ 3282.411 SAA initiation of remedial action.

(a) SAA review of information. Whenever an SAA has information indicating the possible existence of a noncompliance, defect, serious defect, or imminent safety hazard in a manufactured home, the SAA may initiate administrative review of the need for notification and correction. An SAA initiates administrative review by either:

(1) Referring the matter to another SAA in accordance with paragraph (b) of this section or to the Secretary; or

(2) Taking action itself, in accordance with § 3282.412, when it appears that all of the homes affected by the noncompliance, defect, serious defect, or imminent safety hazard were manufactured in the SAA's State.

(b) SAA referral of matter. If at any time it appears that the affected manufactured homes were manufactured in more than one State, an SAA that decides to initiate such administrative review must refer the matter to the Secretary for possible action pursuant to § 3282.412. If it appears that all of the affected manufactured homes were manufactured in another State, an SAA that decides to initiate administrative review must refer the matter to the SAA in the State of manufacture or to the Secretary, for possible action pursuant to § 3282.412.

§ 3282.412 Preliminary and final administrative determinations.

(a) Grounds for issuance of preliminary determination. The Secretary or, in accordance with § 3282.411, an SAA in the State of manufacture, may issue a Notice of Preliminary Determination when:

(1) The manufacturer has not provided to the Secretary or SAA the necessary information to make a determination that:

- (i) A noncompliance, defect, serious defect, or imminent safety hazard possibly exists; or
- (ii) A manufacturer had information that likely indicates a noncompliance, defect, serious defect, or imminent safety hazard for which the manufacturer failed to make the determinations required under § 3282.404;

(2) The Secretary or SAA has information that indicates a noncompliance, defect, serious defect, or imminent safety hazard possibly exists, and, in the case of the SAA, the SAA believes that:

- (i) The affected manufactured home has been sold or otherwise released by a manufacturer to a retailer or distributor, but there is no completed sale of the home to a purchaser;
- (ii) Based on the same factors that are established for a manufacturer's class determination in § 3282.404(b), the information indicates a class of homes in which a noncompliance or defect possibly exists; or
- (iii) The information indicates one or more homes in which a serious defect or an imminent safety hazard possibly exists;

(3) The Secretary or SAA is reviewing a plan under § 3282.408 and the Secretary or SAA disagree with the manufacturer on proposed changes to the plan;

(4) The Secretary or SAA believes that the manufacturer has failed to fulfill the requirements of a waiver granted under § 3282.407(c); or

(5) There is information that a manufacturer failed to make the determinations required under § 3282.404.

(b) Additional requirements—SAA issuance. (1) An SAA that receives information that indicates a serious defect or an imminent safety hazard possibly exists in a home manufactured in that SAA's State must notify the Secretary about that information.

(2) An SAA that issues a preliminary determination must provide a copy of the preliminary determination to the Secretary at the time of its issuance. Failure to comply with this requirement does not affect the validity of the preliminary determination.

(c) Additional requirements—Secretary issuance. The Secretary will notify the SAA of each State where the affected homes were manufactured, and, to the extent reasonable, the SAA of each State where the homes are located, of the issuance of a preliminary determination. Failure to comply with this requirement does not affect the validity of the preliminary determination.

(d) Notice of Preliminary Determination. (1) The Notice of Preliminary Determination must be sent by certified mail or express delivery and must:

- (i) Include the factual basis for the determination;
- (ii) Include the criteria used to identify any class of homes in which the noncompliance, defect, serious defect, or imminent safety hazard possibly exists;
- (iii) If applicable, indicate that the manufacturer may be required to make corrections on a home or in a class of homes; and
- (iv) If the preliminary determination is that the manufacturer failed to make an initial determination required under § 3282.404(a), include an allegation that the manufacturer failed to act in good faith.

(2) The Notice of Preliminary Determination must inform the manufacturer that the preliminary determination will become final unless the manufacturer requests a hearing or presentation of views under subpart D of this part.

(e) Presentation of views. (1) If a manufacturer elects to exercise its right to a hearing or presentation of views, the Secretary or the SAA, as applicable, must receive the manufacturer's request for a hearing or presentation of views:

(i) Within 15 days of delivery of the Notice of Preliminary Determination of serious defect, defect, or noncompliance; or

(ii) Within 5 days of delivery of the Notice of Preliminary Determination of imminent safety hazard.

(2) A Formal or an Informal Presentation of Views will be held in accordance with § 3282.152 promptly upon receipt of a manufacturer's request under paragraph (c) of this section.

(f) Issuance of Final Determination. (1) The SAA or the Secretary, as appropriate, may make a Final Determination that is based on the allegations in the preliminary determination and adverse to the manufacturer if:

(i) The manufacturer fails to respond to the Notice of Preliminary Determination within the time period established in paragraph (c)(2) of this section; or

(ii) The SAA or the Secretary decides that the views and evidence presented by the manufacturer or others are insufficient to rebut the preliminary determination.

(2) At the time that the SAA or Secretary makes a Final Determination that an imminent safety hazard, serious defect, defect, or noncompliance exists, the SAA or Secretary, as appropriate, must issue an order in accordance with § 3282.413.

§ 3282.413 Implementation of Final Determination.

(a) Issuance of orders. (1) The SAA or the Secretary, as appropriate, must issue an order directing the manufacturer to furnish notification if:

(i) The SAA makes a Final Determination that a defect or noncompliance exists in a class of homes;

(ii) The Secretary makes a Final Determination that an imminent safety hazard, serious defect, defect, or noncompliance exists; or

(iii) The SAA makes a Final Determination that an imminent safety hazard or a serious defect exists in any home, and the SAA has received the Secretary's concurrence on the issuance of the Final Determination and order.

(2) The SAA or the Secretary, as appropriate, must issue an order directing the manufacturer to make corrections in any affected manufactured home if:

(i) The SAA or the Secretary makes a Final Determination that a defect or noncompliance exists in a manufactured home that has been sold or otherwise released by a manufacturer to a retailer or distributor but for which the sale to a purchaser has not been completed;

(ii) The Secretary makes a Final Determination that an imminent safety hazard or serious defect exists; or

(iii) The SAA makes a Final Determination that an imminent safety hazard or serious defect exists in any home, and the SAA has received the Secretary's concurrence on the issuance of the Final Determination and order.

(3) Only the Secretary may issue an order directing a manufacturer to repurchase or replace any manufactured home already sold to a purchaser, unless the Secretary authorizes an SAA to issue such an order.

(4) An SAA that has a concurrence or authorization from the Secretary on any order issued under this section must have the Secretary's concurrence on any subsequent changes to the order. An SAA that has issued a Preliminary Determination must have the Secretary's concurrence on any waiver of notification or any settlement when the concerns addressed in the Preliminary Determination involve a serious defect or an imminent safety hazard.

(5) If an SAA or the Secretary makes a Final Determination that the manufacturer failed to make, in good faith, an initial determination required under § 3282.404(a):

(i) The SAA may impose any penalties or take any action applicable under State law and may refer the matter to the Secretary for appropriate action; and

(ii) The Secretary may take any action permitted by law.

(b) Decision to order replacement or repurchase. The SAA or the Secretary will order correction of any manufactured home covered by an order issued in accordance with paragraph (a)(2) of this section, unless any requirements and factors applicable under § 3282.414 and § 3282.415 indicate that the SAA or the Secretary should order replacement or repurchase of the home.

(c) Time for compliance with order. (1) The SAA or the Secretary may require the manufacturer to submit a plan for providing any notification and any correction, replacement, or repurchase remedy that results from an order under this section. The manufacturer's plan must include the method and date by which notification and any corrective action will be provided.

(2) The manufacturer must provide any such notification and correction, replacement, or repurchase remedy as early as practicable, but not later than:

(i) Thirty days after issuance of the order, in the case of a Final Determination of imminent safety hazard or when the SAA or Secretary has ordered replacement or repurchase of a home pursuant to § 3282.414; or

(ii) Sixty days after issuance of the order, in the case of a Final Determination of serious defect, defect, or noncompliance.

(3) Subject to the requirements of paragraph (a)(3) of this section, the SAA that issued the order or the Secretary may grant an extension of the deadline for compliance with an order if:

(i) The manufacturer requests such an extension in writing and shows good cause for the extension; and

(ii) The SAA or the Secretary is satisfied that the extension is justified in the public interest.

(4) When the SAA grants an extension, it must notify the manufacturer and forward to the Secretary a draft of a notice of the extension for the Secretary to publish in the Federal Register. When the Secretary grants an extension, the Secretary must notify the manufacturer and publish notice of such extension in the Federal Register.

(d) Appeal of SAA determination. Within 10 days of a manufacturer receiving notice that an SAA has made a Final Determination that an imminent safety hazard, a serious defect, a defect, or noncompliance exists or that the manufacturer failed to make the determinations required under § 3282.404, the manufacturer may appeal the Final Determination to the Secretary under § 3282.309.

(e) Settlement offers. A manufacturer may propose in writing, at any time, an offer of settlement and shall submit it for consideration by the Secretary or the SAA that issued the Notice of Preliminary Determination. The Secretary or the SAA has the option of providing the manufacturer making the offer with an opportunity to make an oral presentation in support of such offer. If the manufacturer is notified that an offer of settlement is rejected, the offer is deemed to have been withdrawn and will not constitute a part of the record in the proceeding. Final acceptance by the Secretary or an SAA of any offer of settlement automatically terminates any proceedings related to the matter involved in the settlement.

(f) Waiver of notification. (1) At any time after the Secretary or an SAA has issued a Notice of Preliminary Determination, the manufacturer may ask the Secretary or SAA to waive any formal notification requirements. When requesting a waiver, the manufacturer must certify that:

- (i) The manufacturer has made a class determination in accordance with § 3282.404(b);
- (ii) The manufacturer will correct, at the manufacturer's expense, all affected manufactured homes in the class within a time period specified by the Secretary or SAA, but not later than 60 days after the manufacturer is notified of the acceptance of the request for waiver or the issuance of any Final Determination, whichever is later; and
- (iii) The proposed repairs are adequate to correct the noncompliance, defect, serious defect, or imminent safety hazard that gave rise to the issuance of the Notice of Preliminary Determination.

(2) If the Secretary or SAA grants a waiver, the manufacturer must reimburse any owner of an affected manufactured home who chose to make the correction before the manufacturer did so, for the reasonable cost of correction.

(g) Recordkeeping. The manufacturer must provide the report and maintain the records that are required by § 3282.417 for all notification and correction actions.

§ 3282.414 Replacement or repurchase of homes after sale to purchaser.

(a) Order to replace or repurchase. Whenever a manufacturer cannot correct or remove an imminent safety hazard or a serious defect in a manufactured home, for which there is a completed sale to a purchaser, within 60 days of the issuance of an order under § 3282.413 or any extension of the 60-day deadline that has been granted by the Secretary in accordance with § 3282.413(c)(3), the Secretary or, if authorized in writing by the Secretary in accordance with § 3282.413(a)(3), the SAA may require that the manufacturer:

(1) Replace the manufactured home with a home that:

(i) Is substantially equal in size, equipment, and quality; and

(ii) Either is new or is in the same condition that the defective manufactured home would have been in at the time of discovery of the imminent safety hazard or serious defect had the imminent safety hazard or serious defect not existed; or

(2) Take possession of the manufactured home, if the Secretary or the SAA so orders, and refund the purchase price in full, except that the amount of the purchase price may be reduced by a reasonable amount for depreciation if the home has been in the possession of the owner for more than one year and the amount of depreciation is based on:

(i) Actual use of the home; and

(ii) An appraisal system approved by the Secretary or the SAA that does not take into account damage or deterioration resulting from the imminent safety hazard or serious defect.

(b) Factors affecting order. In determining whether to order replacement or refund by the manufacturer, the Secretary or the SAA will consider:

- (1) The threat of injury or death to manufactured home occupants;
- (2) Any costs and inconvenience to manufactured-home owners that will result from the lack of adequate repair within the specified period;
- (3) The expense to the manufacturer;
- (4) Any obligations imposed on the manufacturer under contract, or other applicable law of which the Secretary or the SAA has knowledge; and
- (5) Any other relevant factors that may be brought to the attention of the Secretary or the SAA.

(c) Owner's election of remedy. When under contract or other applicable law the owner has the right of election between replacement and refund, the manufacturer must inform the owner of such right of election and must inform the Secretary of the election, if any, made by the owner.

(d) Recordkeeping. The manufacturer must provide the report that is required by § 3282.417 when a manufactured home has been replaced or repurchased under this section.

§ 3282.415 Correction of homes before sale to purchaser.

(a) Sale or lease prohibited. Manufacturers, retailers, and distributors must not sell, lease, or offer for sale or lease any manufactured home that they have reason to know, in the exercise of due care, contains a noncompliance, defect, serious defect, or imminent safety hazard. The sale of a home to a purchaser is complete when all contractual obligations of the manufacturer, retailer, and distributor to the purchaser and conditions specified in § 3282.252 have been met.

(b) Retailer/distributor notification to manufacturer. When a retailer, acting as a reasonable retailer, or a distributor, acting as a reasonable distributor, believes that a

manufactured home that has been sold to the retailer or distributor, but for which there is no completed sale to a purchaser, likely contains a noncompliance, defect, serious defect, or imminent safety hazard, the retailer or distributor must notify the manufacturer of the home in a timely manner.

(c) Manufacturer's remedial responsibilities. Upon a Final Determination pursuant to § 3282.412(f) by the Secretary or an SAA, a determination by a court of appropriate jurisdiction, or a manufacturer's own determination that a manufactured home that has been sold to a retailer but for which there is no completed sale to a purchaser contains a noncompliance, defect, serious defect, or imminent safety hazard, the manufacturer must do one of the following:

(1) Immediately repurchase such manufactured home from the retailer or distributor at the price paid by the retailer or distributor, plus pay all transportation charges involved, if any, and a reasonable reimbursement of not less than one percent per month of such price paid, prorated from the date the manufacturer receives notice by certified mail of the noncompliance, defect, serious defect, or imminent safety hazard; or

(2) At its expense, immediately furnish to the retailer or distributor all required parts or equipment for installation in the home by the retailer or distributor, and the manufacturer must reimburse the retailer or distributor for the reasonable value of the retailer's or distributor's work, plus a reasonable reimbursement of not less than one percent per month of the manufacturer's or distributor's selling price, prorated from the date the manufacturer receives notice by certified mail to the date the noncompliance, defect, serious defect, or imminent safety hazard is corrected, so long as the retailer or distributor proceeds with reasonable diligence with the required work; or

(3) Carry out all needed corrections to the home.

(d) Establishing costs. The value of reasonable reimbursements as specified in paragraph (c) of this section will be fixed by either:

- (1) Mutual agreement of the manufacturer and retailer or distributor; or
- (2) A court in an action brought under section 613(b) of the Act (42 U.S.C. 5412(b)).

(e) Records required. The manufacturer and the retailer or distributor must maintain records of their actions taken under this section in accordance with § 3282.417.

(f) Exception for leased homes. This section does not apply to any manufactured home purchased by a retailer or distributor that has been leased by such retailer or distributor to a tenant for purposes other than resale. Other remedies that may be available to a retailer or distributor under subpart I of this part continue to be applicable.

(g) Indemnification. A manufacturer may indemnify itself through agreements or contracts with retailers, distributors, transporters, installers, or others for the costs of repurchase, parts, equipment, and corrective work incurred by the manufacturer pursuant to paragraph (c).

§ 3282.416 Oversight of notification and correction activities.

(a) IPIA responsibilities. The IPIA in each manufacturing plant must:

(1) Assure that notifications required under this subpart I are sent to all owners, purchasers, retailers, and distributors of whom the manufacturer has knowledge;

(2) Audit the certificates required by § 3282.417 to assure that the manufacturer has made required corrections;

(3) Whenever a manufacturer is required to determine a class of homes pursuant to § 3282.404(b), provide either:

(i) The IPIA's written concurrence on the methods used by the manufacturer to identify the homes that should be included in the class of homes; or

(ii) The IPIA's written statement explaining why it believes the manufacturer's methods for determining the class of homes were inappropriate or inadequate; and

(4) Conduct, at least monthly, a review the manufacturer's service records of determinations under § 3282.404 and take appropriate action in accordance with §§ 3282.362(c) and 3282.364.

(b) SAA and Secretary's responsibilities. (1) SAA oversight of manufacturer compliance with this subpart will be done primarily by periodically checking the records that manufacturers are required to keep under § 3282.417.

(2) The SAA or Secretary to which the report required by § 3282.417(a) is sent is responsible for assuring, through oversight, that remedial actions have been carried out as described in the report. The SAA of the State in which an affected manufactured home is located may inspect that home to determine whether any correction required under this subpart I is carried out in accordance with the approved plan or, if there is no plan, with the construction and safety standards or other approval obtained by the manufacturer.

§ 3282.417 Recordkeeping requirements.

(a) Manufacturer report on notifications and corrections. Within 30 days after the deadline for completing any notifications, corrections, replacement, or repurchase required pursuant to this subpart, the manufacturer must provide a complete report of the action taken to, as appropriate, the Secretary or the SAA that approved the plan under § 3282.408, granted a waiver, or issued the order under § 3282.413. If any other SAA or the Secretary forwarded the relevant consumer complaint or other information to the manufacturer in accordance with § 3282.403, the manufacturer must send a copy of the report to that SAA or the Secretary, as applicable.

(b) Records of manufacturer's determinations. (1) A manufacturer must record each initial and class determination required under § 3282.404, in a manner approved by the Secretary or an SAA and that identifies who made each determination, what each determination was, and all bases for each determination. Such information must be available for review by the IPIA.

(2) The manufacturer records must include:

(i) The information it received that likely indicated a noncompliance, defect, serious defect, or imminent safety hazard;

(ii) All of the manufacturer's determinations and each basis for those determinations;

(iii) The methods used by the manufacturer to establish any class, including, when applicable, the cause of the defect, serious defect, or imminent safety hazard; and

(iv) Any IPIA concurrence or statement that it does not concur with the manufacturer's class determination, in accordance with § 3282.404(b).

(3) When the records that a manufacturer is required to keep in accordance with this paragraph (b) involve a class of manufactured homes that have the same noncompliance, defect, serious defect, or imminent safety hazard, the manufacturer has the option of meeting the requirements of this paragraph by establishing a class determination file, instead of including the same information in the file required by paragraph (e) of this section for each affected home. Such class determination file must contain the records of each class determination, notification, and correction, as applicable. For each class determination, the manufacturer must record once in each class determination file the information common to the class, and must identify by serial number all of the homes that the class comprises and that are subject to notification and correction, as applicable.

(c) Manufacturer records of notifications. When a manufacturer is required to provide notification under this subpart, the manufacturer must maintain a record of each type of notice sent and a complete list of the persons notified and their addresses. The manufacturer must maintain these records in a manner approved by the Secretary or an SAA to identify each notification campaign.

(d) Manufacturer records of corrections. When a manufacturer is required to provide or provides correction under this subpart, the manufacturer must maintain a record of one of the following, as appropriate, for each manufactured home involved:

(1) If the correction is made, a certification by the manufacturer that the repair was made to conform to the federal construction and safety standards in effect at the time the home was manufactured and that each identified imminent safety hazard or serious defect has been corrected; or

(2) If the owner refuses to allow the manufacturer to repair the home, a certification by the manufacturer that:

- (i) The owner has been informed of the problem that may exist in the home;
- (ii) The owner has been provided with a description of any hazards, malfunctions, deterioration, or other consequences that may reasonably be expected to result from the defect, serious defect, or imminent safety hazard; and
- (iii) An attempt has been made to repair the problems, but the owner has refused the repair.

(e) Maintenance of manufacturer's records. (1) Except as provided in paragraph (b)(3) of this section, for each manufactured home produced by a manufacturer, the manufacturer must maintain in a printed or electronic format all of the information required by paragraphs (b), (c),

and (d) of this section, and must consolidate the information in a readily accessible file or in a readily accessible combination of a printed file and an electronic file. For each home, the manufacturer also must include in such file a copy of the homes data plate; all information related to manufacture, handling, and assembly of the home; any checklist or similar documentation used by the manufacturer in the transport of the home; the name and address of the retailer; the original or a copy of each purchaser's registration record received by the manufacturer; all correspondence with the retailer and homeowner that is related to the home; any information received by the manufacturer regarding setup of the home; all work orders for servicing the home; and the information that the manufacturer is required to keep pursuant to § 3282.211. The manufacturer must organize all such files in order of the serial numbers of the homes produced.

(2) The manufacturer must maintain each of these manufactured-home records at the plant where the home was produced. If that plant is no longer in existence, the manufacturer must keep the records at its nearest production plant in the same State, or, if such a plant does not exist, at the manufacturer's corporate headquarters.

§ 3282.418 Factors for appropriateness and amount of civil penalties.

In determining whether to seek a civil penalty for a violation of the requirements of this subpart, and the amount of such penalty to be recommended, the Secretary will consider the provisions of the Act and the following factors:

- (a) The gravity of the violation;
- (b) The degree of the violator's culpability, including whether the violator had acted in good faith in trying to comply with the requirements;
- (c) The injury to the public;

- (d) Any injury to owners or occupants of manufactured homes
- (e) The ability to pay the penalty;
- (f) Any benefits received by the violator;
- (g) The extent of potential benefits to other persons;
- (h) Any history of prior violations;
- (i) Deterrence of future violations; and
- (j) Such other factors as justice may require.

11. In 3282.554, revise paragraph (b) to read as follows:

§ 3282.554 SAA reports.

* * * * *

(b) The description of the SAA's oversight activities and findings regarding consumer complaints, notification, and correction actions during the preceding month. The IPIA report for the preceding month described in § 3282.553, as well as any orders issued pursuant to 3282.413 and manufacturer reports under § 3282.417(a), which were received during the preceding month, are to be attached to each such SAA report as an Appendix thereto.

Dated: September 18, 2013.

Carol J. Galante,
Assistant Secretary for Housing—
Federal Housing Commissioner.

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